

D R A F T

MEMORANDUM

To: W. E. Finley, Director

From: Daniel H. Shear, General Counsel

Subject: Distinction between the functions of the Commission of Fine Arts and the National Capital Planning Commission with reference to public buildings in the District of Columbia

You have requested our views as to the distinction between the functions of the Commission of Fine Arts and the National Capital Planning Commission with reference to public buildings in the District of Columbia.

The Commission of Fine Arts was created by the Act of May 17, 1910 (36 Stat. 371; 40 U. S. C. 104) and charged with the duty of advising "upon the location of statues, fountains, and monuments in the public squares, streets, and parks in the District of Columbia, and upon the selection of models for statues, fountains, and monuments erected under the authority of the United States and upon the selection of artists for the execution of the same." In addition, the Commission is required to "advise generally upon questions of art when required to do so by the President, or by any committee of either House of Congress."

Subsequent Presidential directions extended and refined the jurisdiction of the Commission to

(1) plans for public buildings to be erected in the District of Columbia for the General Government (Executive Order No. 1259, October 25, 1910);

(2) plans for new structures to be erected in the District of Columbia under the direction of the Federal Government which "affect in any important way the appearance of the city" (Executive Order No. 1862, November 28, 1913); and

(3) all "important" plans for parks and all public buildings, constructed by executive departments or the District of Columbia, which "in any essential way affect the appearance of the city of Washington, or the District of Columbia" (Executive Order No. 3524, July 28, 1921).

In each instance, such plans are required to be submitted to the Commission for comment and advice (not approval). Bureau of the Budget Circular No. A-11 requires consultation with the Commission on buildings and other structures in the District of Columbia "which may affect in an important way the appearance of the city" before submission by any agency of annual budget estimates for plans and construction of such buildings and structures.

[Pursuant to the Act of May 16, 1930 (46 Stat. 366), as amended (5 D. C. Code 410) - the so-called Shipstead-Luce Act - the Commission of Fine Arts also advises the Commissioners of the District of Columbia with respect to the height and appearance, color, and texture of the materials of exterior construction for private and semi-public buildings facing public buildings and parks in specified areas of the District of Columbia for which application for building permits have been made to the District Commissioners. In addition, the Commission advises the District Commissioners with respect to the exterior architectural features, height, appearance, color, and

texture of the materials of exterior construction "which is subject to public view from a public highway" in connection with applications for the construction, alteration, reconstruction, or rasing of any building in "Old Georgetown", as defined in the Act of September 22, 1950 (64 Stat. 903; 5 D. C. Code 801) - the so-called Old Georgetown Act.⁷

It is apparent that the basic function of the Commission of Fine Arts with respect to public buildings in the District of Columbia is to advise concerning their exterior design and the relationship of such buildings to the appearance of the National Capital.

On the other hand, the National Capital Planning Commission, in its comprehensive and project planning roles under the National Capital Planning Act of 1952 (66 Stat. 781; 40 U. S. C. 71), is concerned with the general location, arrangement, character, and extent of public buildings, structures, and reservations. Further, the Planning Commission exercises zoning-type control over public buildings under the Act of June 20, 1938 (52 Stat. 797), as amended (5 D. C. Code 413-428), which requires the approval of the Commission with respect to the location, height, bulk, number of stories, and size, and the provision for open space in and around such buildings.

Exercise of aesthetic control by the Commission of Fine Arts and zoning-type control by the Planning Commission may ordinarily require the submission of site plans, elevations, and renderings for proposed public buildings to both commissions and necessitate a high degree of consultation between the commissions and their staffs. But

the basis for review of such plans by each commission and the respective roles of the commission are distinct.
